

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN A. KNOX,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK;
AND THE HONORABLE CYNTHIA N.
GIULIANI, DISTRICT JUDGE,

Respondents,

and

LISA MCCLARREN,
Real Party in Interest.

No. 60835

FILED

MAY 11 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER DENYING PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION


This original petition for a writ of mandamus or prohibition challenges a district court order granting temporary custody of the minor child to real party in interest. Eighth Judicial District Court, Clark County; Cynthia N. Giuliani, Judge.

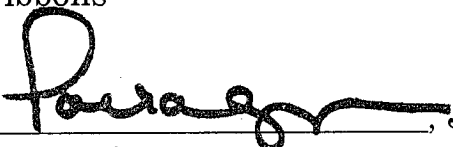
A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion. See NRS 34.160; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the district court's jurisdiction. See NRS 34.320; Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). It is within our discretion to determine if writ relief will be granted. Smith, 107 Nev. at 677, 818 P.2d at 851. Petitioner bears the burden of demonstrating that extraordinary relief is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Having reviewed the petition, the appendix, and the district court's order, we conclude that our intervention by way of extraordinary relief is not warranted. In particular, the district court acted within its discretion by granting real party in interest temporary custody of the child in light of the doctor's report concluding that real party in interest did not need to have supervised visitation and real party in interest's attempts to comply with the district court's orders regarding counseling and completion of a co-parenting class. See Sims v. Sims, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993) (explaining that the district court has broad discretion in determining issues of child custody). Moreover, contrary to petitioner's arguments, the district court's order was not effectively a permanent order, in violation of NRS 125C.175, which prohibits permanent modification of a custody order while a parent with custodial rights is on a mandatory military deployment. The district court included precautions in the order to address petitioner's concerns that real party in interest may attempt to remove the child from this state, and there is no indication that the current order will automatically apply to future deployments. See NRS 125C.160 (permitting the district court to "temporarily modify a custody or visitation order to reasonably accommodate the deployment of a parent"). Accordingly, we

ORDER the petition DENIED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Cynthia N. Giuliani, District Judge
Bowen Law Offices
Mann Law Firm
Eighth District Court Clerk